

SUBORDINATION AGREEMENT

This SUBORDINATION AGREEMENT is executed as of _____, 2003, by **City of College Station, ("Subordinate Lienholder")**, in favor of **Commerce National Bank, a branch of Lubbock National Bank ("Lender")**, and its successors and assigns.

WITNESSETH:

WHEREAS, Subordinate Lienholder is the legal and equitable owner and holder of that certain Promissory Note (the "**Note**") dated **October 19, 1998** in the principal sum of **\$112,795.00** executed by **Dixie Chicken, Inc. ("Borrower")**, payable to the order of Subordinate Lienholder, secured by that certain Deed of Trust ("**Deed of Trust**") dated of even date with the Note, executed by Borrower, to Trustee, for the benefit of Subordinate Lienholder, recorded in **Volume 3299, page 321**, of the Official Records of Brazos County, Texas, and covering the Property (as herein defined) (the Note, Deed of Trust, and any and all other documents evidencing, securing and pertaining to the loan evidenced by the Note are herein collectively referred to as the "**Subordinate Lien Documents**"); and

WHEREAS, Lender has agreed to make or cause to be made a loan or loans to Borrower in an aggregate amount not to exceed **One Million Seven Hundred Thousand and No/100 Dollars (\$1,700,000.00)** (the "**Loan**"), which Loan is evidenced by two (2) Notes made by Borrower for the benefit of Lender (the "**CNB Note**") (**\$200,000.00** and **\$1,500,000.00** respectively) , and secured, inter alia, by a Deed of Trust and Security Agreement with Assignment of Rents ("**CNB Deed of Trust**") dated **July 30, 2003** executed by Borrower to **Thomas H. Aughinbaugh, III**, as Trustee, for the benefit of Lender, and recorded in the Official Records of Brazos County, Texas, at **Volume _____, Page _____**, and covering the land described in **Exhibit "A"** attached hereto and incorporated herein by reference and all improvements thereon (such land and improvements are referred to herein, collectively, as the "**Property**") (the CNB Note and CNB Deed of Trust and any and all other documents evidencing, securing or pertaining to the Loan are hereinafter collectively referred to as the "**Loan Documents**"); and

WHEREAS, on even date herewith, Borrower is executing **two (2) Real Estate Lien Notes, Deed of Trust, Security Agreement, Collateral Pledge and Security Agreement**, whereby Lender will fund the CNB Note; and

WHEREAS, Lender has required, as a condition to making the Loan, that all liens, rights, titles and interests securing payment of the CNB Note and the other Loan Documents should be prior and superior to any and all of the liens, rights, titles and interests of Subordinate Lienholder in and to the Property under, pursuant to and by virtue of the Subordinate Lien Documents and that any and all liens, rights, titles and interests of Subordinate Lienholder in and to the Property under, pursuant to and by virtue of the Subordinate Lien Documents should be subordinated to all liens, rights, titles and interests of the Loan Documents.

WHEREAS, Subordinate Lienholder agrees to subordinate its lien on the Property to all liens, rights, titles and interests securing payment of the CNB Note and the other Loan Documents but only in the amount of **\$150,029.00**.

WHEREAS, the Subordinate Lienholder does not have a lien on any of the property encumbered by the CNB Deed of Trust other than the lien of Subordinate Lienholder in and to the Property.

NOW, THEREFORE, for and in consideration of the premises and the sum of **TEN AND NO/100 DOLLARS (\$10.00)**, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, and to induce Lender to modify, renew and extend the Loan, Subordinate Lienholder hereby agrees as follows:

1. **Subordination of Lien.** Subordinate Lienholder does hereby expressly subordinate and make second, junior and inferior any and all rights, powers and prerogatives of Subordinate Lienholder in and to the Property under, pursuant to and by virtue of the Subordinate Lien Documents to the liens, rights, titles and interests of the Loan Documents securing the Property to the extent of the value specified in Section 2 hereinbelow, and Subordinate Lienholder agrees that the liens, rights, titles and interests of the Loan Documents to the extent of and limited by the amount specified in Section 2 herein, shall be unconditionally first, prior and superior to any and all rights, powers and prerogatives of Subordinate Lienholder in and to the Property under, pursuant to and by virtue of the Subordinate Lien Documents. Subordinate Lienholder further agrees that any and all liens, rights, titles and interests of Subordinate Lienholder in and to the Property under, pursuant to and by virtue of the Subordinate Lien Documents shall be and remain expressly subject and subordinate to the liens, rights, titles and interests of the Loan Documents and any renewal, extension or refinancing thereof.
2. **Agreement.** Subordinate Lienholder expressly agrees and acknowledges that the principal amount of the CNB Note, not to exceed the lesser of (i) **\$150,029.00**; or (ii) the then existing unpaid balance on the Subordinate Lien Documents, is and shall be secured by the lien of the CNB Deed of Trust, and shall remain first and prior to the Subordinate Lien Documents only for said amount and that Lender may only recover said amount from any proceeding against Borrower or Subordinate Lienholder for default on its first lien on the Property. Additionally, Lender expressly agrees that if the Subordinate Lien Documents have not been paid in full, the Lender shall recover any amounts due and owing under the CNB Note that are in excess of the lesser of (i) **\$150,029.00**; or (ii) the then existing unpaid balance on the Subordinate Lien Documents, from other property of the Borrower and not from the Property.
3. **Controlling Agreement.** Subordinate Lienholder hereby acknowledges that Lender would not make the Loan without this Subordination Agreement and agrees that this Subordination Agreement shall be the whole and only agreement with regard to the subordination of the rights, powers, interests and prerogatives of Subordinate Lienholder with respect to the Property and to the liens, rights, titles and interests of the Subordinate Lien Documents, and this Subordination Agreement shall supersede and cancel, but only insofar as would affect the priority rights hereinbefore specifically described, any prior agreements regarding such subordination provided, however, that nothing herein shall impair, as between Borrower (Dixie Chicken) and the Subordinated Lienholder, the obligations of Borrower under such Subordinated Lien, which are unconditional and absolute. The parties agree, except as herein modified, that this Agreement shall in no manner affect or impair the original agreement between Subordinate Lienholder and Borrower, the terms of the Note, the Subordinated Note and the documents securing same.
4. **Representations.** Subordinate Lienholder acknowledges that it has marked its files relating to the Property and the Subordinate Lien Documents to reflect that Lender is the holder of a superior lien on the Property. Lender and Subordinate Lienholder agree that each party will give written notice to the other party in the event of any default under the Superior Lien documents or Subordinate Lien Documents. Lender and Subordinate Lienholder shall have 30 days after the effective date of any such notice of default within which to cure such default; provided, however, neither party shall be obligated to cure any such default. The notices to be given hereunder shall be in writing, and shall be given by depositing same in the United States mail, postage prepaid, registered or certified, with return receipt requested, addressed to the following address or such other address of which has been notified in writing:

Commerce National Bank
1221 University Drive East
College Station, Texas 77840
Attn: Thomas H. Aughinbaugh, III

City of College Station
Community Development Director
1101 Texas Avenue
P.O. Box 9960
College Station, Texas 77842

With a copy to:
City Attorney
1101 Texas Avenue
College Station, TX 77840

And
City Manager
1101 Texas Avenue
College Station, TX 77840

Notices shall be effective on the day so deposited in the United States mail.

5. No amendment, modification, or waiver shall be deemed to be made hereunder unless the same shall be in writing signed by Subordinate Lienholder. Each such waiver, if any, shall be a waiver only with respect to the specific matters to which the waiver relates and shall in no way impair the rights of the Subordinate Lender or the obligations of the Borrower to the Subordinate Lienholder in any other respect at any time.
6. This agreement shall be governed by and constructed in accordance with the Laws of the State of Texas.

EXECUTED to be effective as of the _____ day of _____, 2003.

LENDER:

**COMMERCE NATIONAL BANK
a Branch of Lubbock National Bank**

By: _____

**Thomas H. Aughinbaugh, III
Senior Vice President**

SUBORDINATE LIENHOLDER:

City of College Station

By: _____

Name: Ron, Silvia

Title: Mayor

Attest: _____

Connie Hooks, City Secretary

APPROVED:

Rouanne Hema

City Attorney

THE STATE OF TEXAS§

COUNTY OF BRAZOS

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The foregoing instrument was ACKNOWLEDGED before my this ____ day of _____,
2003, by _____, _____ of **City of**
College Station.

Notary Public, State of Texas

THE STATE OF TEXAS§

COUNTY OF BRAZOS

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The foregoing instrument was ACKNOWLEDGED before my this ____ day of _____,
2002, by **Thomas H. Aughinbaugh, III, Senior Vice President of COMMERCE NATIONAL BANK a**
Branch of Lubbock National Bank.

Notary Public, State of Texas

EXHIBIT "A"

PROPERTY DESCRIPTION

[The Property Description follows this cover page.]

Lots Twenty-one (21) and Twenty-two (22), Block Twelve (12), W. C. Boyett Estate Partition Map, City of College Station, according to plat thereof recorded in Volume 100, Page 440 of the Deed Records of Brazos County, Texas.